

Barrier Grouping 6

**Lengthy purchase power
agreement negotiations**

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Utilities are required to purchase power from Qualifying Facilities at their avoided costs (unless a higher or lower price is negotiated) pursuant to the Public Utility Regulatory Policies Act of 1978, as amended ("PURPA"), and the PUC's Standards for Small Power Production and Cogeneration in the State of Hawaii (H.A.R. Title 6, Chapter 74), (the PUC's "Avoided Cost Rules"), which implement PURPA and H.R.S. §269-27.2. Contracts for such purchases are, for the most part, dependent upon satisfactory negotiations between the utility and IPP.

H.R.S. §269-27.2(c)¹ and H.A.R. §6-74-15(c)² authorize the PUC to resolve certain disputes concerning the rate or terms of purchase between electric utilities and IPPs.

Proponents of this barrier grouping maintain that (1) negotiations between utilities and IPPs in Hawaii have taken as long as five years, which is a disincentive to the development of renewable energy by IPPs, (2) utilities actively delay the consummation of negotiations in order to avoid having to purchase IPP-generated power, which permits avoidance of the law without expressly violating it, and (3) utilities discourage the execution of PPAs through their non-utility generator policies.

¹ H.R.S. §269-27.2(c) provides, among other things, that:

In the event the public utility and the supplier fail to reach an agreement for a rate, the rate shall be as prescribed by the public utilities commission according to the powers and procedures provided in this chapter.

² H.A.R. §6-74-15(c) states that:

In the event the electric utility and qualifying facility has failed to reach an agreement on the rate or terms of purchase within seventy-five days after the qualifying facility first offers to sell energy or capacity to the electric utility, the electric utility shall submit a petition to the PUC requesting a hearing on the matter.

Opponents of this barrier grouping maintain that (1) electric utilities in Hawaii have entered into numerous PPAs with renewable power producers,³ (2) there have been fewer PPAs with renewable producers in recent years, due in substantial part to lower avoided costs as a result of lower oil prices, (3) it may take a substantial period of time to successfully conclude PPA negotiations with an executed, PUC-approved PPA (citing the Puna Geothermal Venture and H-Power PPAs), (4) lengthy negotiations generally have been the result of the utility's willingness to continue negotiations despite the developer's request for a price above avoided costs, and (5) renewable producers dissatisfied with power purchase negotiations may petition the PUC for relief.

³

For example, electric utilities in Hawaii have entered into PPAs for the purchase of firm capacity and energy with sugar cane processing companies; as-available energy contracts with sugar producers, run-of-the-river hydroelectric producers, wind power producers, a methane-from-landfill producer, and a geothermal producer; and firm capacity PPAs with woodchip biomass producers, and a geothermal producer.

Barrier 6.a

Lack of Incentives to utilities to purchase renewable energy

DEFINITION:

See discussion under barrier 5.b.

DISCUSSION:

See discussion under barrier 5.b.

STRATEGIES:

Possible strategies include, but are not limited to:

See discussion under barrier 5.b.

Barrier 6.b

Implementation of existing statutes and regulations

DEFINITIONS:

S.C.R. No. 2 (S.D.1) (1994) requests that the PUC initiate rulemaking proceedings to amend H.A.R. § 6-74-15(c).

Section 269-16.2, H.R.S., requires the approval by the PUC of any rules, guidelines or other standards of a public utility which interpret federal or state laws governing nonutility generators before adoption.

DISCUSSION:

S.C.R. No. 2 (S.D.1.) (1994) requests that the PUC amend H.A.R. §6-74-15(c) to allow a qualifying facility to petition the PUC for a hearing when the electric utility and the qualifying facility have been unable to reach an agreement on the rates and terms of a power purchase agreement within 75 days from the date that the qualifying facility first offers to sell energy or capacity to the electric utility. To date, the PUC has not initiated the requested rulemaking. As amended, HAR §6-74-15(c) will read substantially as follows:

(c) In the event the electric utility and qualifying facility have failed to reach an agreement on the rate or terms of purchase within seventy-five days after the qualifying facility first offers to sell energy or capacity to the electric utility, the electric utility shall, and/or the qualifying facility may submit a petition to the PUC requesting a hearing on the matter. The PUC shall act expeditiously upon the petition.

There is no consensus that this is a barrier. Proponents maintain that (1) it is the PUC's obligation and duty to resolve, in a fair and expeditious manner, disputes concerning failures of the electric utility and the QF to reach agreement on the rates or terms of power purchase agreements, but that under the current rule, only an electric utility is allowed to petition the PUC for a hearing, that utilities do not always petition the PUC when an impasse is reached, and that there is no penalty for the utility's failure to comply with the rules, (2) that a QF's only alternative in the face of a utility unwilling to petition the PUC is to file its own complaint, (3) this is an inadequate remedy because it, too, takes too long, and (4) the proposed changes to H.A.R. §6-74-15(c) will assist in accomplishing the objective of resolving disputes between the QF and the utility.

Opponents maintain that the failure to amend H.A.R. § 6-74-15(c) is not a barrier, that the PUC cannot "make" purchase power agreements between developers and utilities, that reliance on the PUC to negotiate such agreements would overburden the PUC and probably further delay negotiations, and that renewable producers dissatisfied with power purchase negotiations may already petition the PUC. Opponents do not object to the specific modification of the rule, as proposed in S.C.R. No. 2 (S.D.1), but maintain that (1) the modification is unnecessary, and (2) if the PUC does modify H.A.R. § 74-15(c), it should establish strict guidelines (particularly in the case of firm capacity offers) to ensure that petitions are not submitted until developers have submitted a full and complete offer, and can obtain site control. H.R.S. § 269-16.2 provides that:

Any rules, guidelines, or other standards of a public utility which interpret federal or state laws governing non-utility generators, or which make a non-utility generator monetarily responsible for the public utility's costs and profits of doing business as a public utility, shall be approved by the public utilities commission before adoption.

There is no consensus that this is a barrier. Proponents maintain that unilateral utility guidelines, such as certain provisions included in HECO's "Guidelines for Integration of Non-Utility Generation (NUG)", have traditionally been unfair and frustrate the purpose of PURPA to provide a level playing field during negotiations between the utility and a qualifying facility, and that the lack of any PUC approval or submission of the matter by the utility to the PUC represents a frustration of the law, and cite the PUC decision in Docket No. 7956 in support of their position.

Opponents maintain that the H.R.S. § 269-16.2 is inapplicable to the underlying issue inasmuch as the law applies only when a utility seeks to "adopt" a rule, guideline, or other standard. Opponents further maintain that the few provisions within the various guidelines which are subject to the law are already the subject of recent and pending PUC proceedings. The PUC's decision in Docket No. 7956 addressed a number of the NUG guidelines to which NUGs have objected (e.g., parallel planning costs, credit quality impact, etc.). Re Hawaii Electric Light Co., Docket No. 7956, Decision and Order No. 14030 (July 31, 1995).

STRATEGIES:

Possible strategies include, but are not limited to:

Strategy 6.b.1

The PUC to implement the provisions of S.C.R. No. 2 (1994) which requests the PUC to initiate rulemaking procedures to amend H.A.R. §6-74-15(c) to facilitate and expedite the execution of utility purchase power agreements with Qualifying Facilities.

DISCUSSION:

See discussion under barrier 6.b.

VEHICLE: Rulemaking proceedings

AGENCY: PUC

POSITION OF THE PARTIES:

PROPOSERS: d, r, w, n

OPPOSERS: heco, ke

NO POSITION: ki, m, h, ca, p, i, krl, ers

Strategy 6.b.2

The PUC to enforce the current rule (HAR §6-74-15(c)) to ensure that negotiations between the utility and qualifying facilities are concluded in an expeditious manner. If necessary, the commission should utilize the services of a hearing officer/arbitrator to conduct the hearing.

DISCUSSION:

There is no consensus on either the barrier (as discussed above) or the efficacy of the proposed strategy. Proponents maintain that, contrary to the rules purpose, the rule as currently implemented does not ensure that negotiations are completed in an expeditious manner. Opponents maintain that the rule is currently being enforced, and that enforcement to the satisfaction of the proponents is impractical and unwise.

VEHICLE: PUC action enforcing existing rules

AGENCY: PUC

POSITION OF THE PARTIES:

PROPOSERS: d, r, p, w, n, krl, i, ers

OPPONENTS: heco, ke

NO POSITION: ki, m, h, ca

Strategy 6.b.3

PUC to implement the requirements of H.R.S. §269-16.2.

DISCUSSION:

There is no consensus that the PUC has failed to enforce H.R.S. §269-16.2.

VEHICLE: PUC enforcement of existing law.

AGENCY: PUC

POSITION OF THE PARTIES:

PROPOSERS: d, r, p, w, n

OPPOSERS: heco, ke

NO POSITION: ki, m, h, ca, p, i, krl, ers

Barrier 6.c**Protracted time to negotiate with RE developers****DEFINITION:**

All sides to a PPA benefit from an expeditiously negotiated agreement which provides needed power at a fair price. Developers of renewable energy maintain that negotiations to obtain a PPA take too long.

DISCUSSION:

There is no consensus as to the underlying proposition that PPAs take "too long" or, even, "a long time" to negotiate. Proponents maintain that PPA negotiations take too long to negotiate, that utilities discourage the execution of PPAs through their NUG policies, and that utilities prefer utility-owned oil-based generation.

Opponents maintain that this is a perceived barrier and that it may take a substantial period of time to successfully conclude PPA negotiations with an executed, PUC-approved PPA. Opponents also maintain that lengthy negotiations have generally been the result of the utility's willingness to continue to review proposals from a project developer, despite the developer's request for a price above avoided cost.

STRATEGIES: Possible strategies include, but are not limited to:

Strategy 6.c.1 Initiate rulemaking proceedings to adopt rules to enforce mandates (Federal and State laws, and Legislative Resolutions) and to promote fair and expedient negotiations between utilities and developers.

DISCUSSION:

There is no consensus on the existence of the barrier (See Background to barrier 6.b.) or on the question of whether the proposed strategy is appropriate assuming the existence of the identified barrier. The positions of the proponents and the opponents of this strategy are summarized within the background, barrier 6.b.

VEHICLE: PUC-initiated rulemaking

AGENCY: PUC

POSITION OF THE PARTIES:

PROPOSERS: r, p, w, n, krl, i, ers, z

OPPOSERS: heco, ke

NO POSITION: ki, m, h, d, ca

Strategy 6.c.2

Streamline regulatory approval process for renewable power purchase agreements.

DISCUSSION:

There is no consensus on the existence of the barrier (see discussion referenced above) or on the question of whether the proposed strategy is appropriate assuming the existence of the identified barrier. To the extent that proponents refer to matters addressed under barrier 6.b., proponents and opponents have stated their positions at those locations. To the extent that proponents refer to some other, unidentified, form of streamlining the regulatory approval process for PPAs, the opponents offer no response in the absence of further detail.

VEHICLE: PUC-initiated rulemaking

AGENCY: PUC

POSITION OF THE PARTIES:

PROPOSERS: r, p, w, n, krl, i, ers, z

OPPOSERS: heco

NO POSITION: ki, m, h, d, ca, ke

Strategy 6.c.3

Enforce current rules regarding negotiations between the utility and qualifying facilities to ensure that negotiations are fair and that the utility is not allowed to leave the renewable developer in an indefinite state of impasse.

DISCUSSION:

See discussion under barrier 6.b.

VEHICLE: PUC enforcement of existing rules.

AGENCY: PUC

POSITION OF THE PARTIES:

PROPONENTS: d, r, p, h, w, n, krl, i, ers, z

OPPONENTS: heco, ke

NO POSITION: ki, m, ca

Strategy 6.c.4

Initiate rulemaking pursuant to S.C.R. No. 2 to facilitate and expedite the execution of utility power purchase agreements with qualifying facilities.

DISCUSSION:

See discussion under barrier 6.b.

VEHICLE: PUC-initiated rulemaking.

AGENCY: PUC

POSITION OF THE PARTIES:

PROPONENTS: d, r, p, w, n, krl, i, ers, z

OPPONENTS: heco, ke

NO POSITION: ki, d, h, ca

Strategy 6.c.5

Utilize the services of a hearing officer/arbitrator to conduct the hearing in enforcing H.A.R. §6-74-15(c), if necessary.

DISCUSSION:

There is no consensus on the existence of the barrier (see discussion above) or concerning the propriety of the identified strategy assuming the existence of the barrier. Proponents maintain that the PUC should retain the services of a hearing officer or arbitrator to conduct the hearings necessary to accomplish those rules should the PUC's heavy schedule prevent it from presiding over those hearings. Opponents maintain that the PUC is already effectively enforcing the identified rule. Opponents, furthermore, hesitate to advise the PUC as to which internal matters the PUC should expend its scarce dollar resources on.

VEHICLE: PUC employment of hearing officer or arbitrator

AGENCY: PUC

POSITION OF THE PARTIES:

PROPOSERS: r, p, m, w, n, krl, i, ers, z

OPPOSERS: heco, ke

NO POSITION: h, ki, m, ca

Strategy 6.c.6

Implement the requirements of H.R.S. §269-16.2 requiring Commission approval of any rules, guidelines or standards of public utilities regarding non-utility generators.

DISCUSSION:

See discussion under barrier 6.b.

VEHICLE: PUC enforcement of existing law.

AGENCY: PUC

POSITION OF THE PARTIES:

PROPOSERS: d, r, p, w, n, krl, i, ers, z

OPPOSERS: heco, ke

NO POSITION: ki, m, h, ca

Strategy 6.c.7

Rulemaking to require that when a complaint is filed by the utility or qualifying facility regarding negotiations, a decision and order shall be issued within sixty days.

DISCUSSION:

See discussion under barrier 6.b.

VEHICLE: PUC-initiated rulemaking or legislation

AGENCY: PUC / Legislature

POSITION OF THE PARTIES:

PROPOSERS: r, p, m, w, n, krl, i, ers, z

OPPOSERS: heco, ke

NO POSITION: ki, d, h, ca

Strategy 6.c.8

Expedite the contracting process by promptly reviewing and responding to a contract proposal, and specifying for the qualifying facility all of the problems which the utility has with the offer within seventy-five days.

DISCUSSION:

There is no consensus as to the existence of the barrier (see discussion above) or concerning the propriety of the identified strategy assuming the existence of the barrier. Proponents maintain that the seventy-five day period provided for in the regulation represents the PUC's expectation of a reasonable time period in which PPAs can be negotiated, that the absence of a meaningful deadline allows utilities to prolong negotiations indefinitely, and that utilities can expedite the negotiation process by being more forthcoming about their concerns with a contract proposal, and allowing the qualifying facility the timely opportunity to address the utility's concern. Opponents maintain that the referenced seventy-five day limitation applies only to completed offers under the rules. HAR §6-74-15(c). Opponents further maintain that it is unrealistic to expect that negotiations can be completed within 75 days in the case of a firm capacity PPA, and that submission to the PUC within 75 days will slow down rather than expedite PPA negotiations.

VEHICLE: Utilities enacting the strategy

AGENCY: Utilities

POSITION OF THE PARTIES:

PROPOSERS: d, r, p, ki, m, h, w, n, krl, i, ers

OPPOSERS: heco, ke

NO POSITION: ca

Strategy 6.c.9

Develop a standard offer contract for renewable energy sales to utilities.

DISCUSSION:

There is no consensus as to the existence of the barrier (see discussion above) or concerning the propriety of the identified strategy assuming the existence of the barrier. Proponents maintain that standard offers and/or standard form contracts will expedite the PPA negotiation process, and that such contracts are appropriate in the case of the relatively less complicated and less controversial as-available projects. Opponents maintain that standard offers and/or standard form contracts may or may not encourage (citing California as an example) the implementation of renewable resources, depending on the terms and conditions of the standard offers and/or contracts.

VEHICLE: PUC-initiated rulemaking

AGENCY: PUC

POSITION OF THE PARTIES:

PROPONENTS: ke, d, r, p, ki, m, h, w, n, krl, i, ers

OPPONENTS: heco, z

NO POSITION: ca

Strategy 6.c.10

Reduce the uncertainty regarding the determination of avoided costs.

DISCUSSION:

See discussion barrier 1.c.

POSITION OF THE PARTIES:

PROPONENTS: heco, ke, d, p, ki, m, h, w, n, krl, i, ers, r, ca

OPPONENTS:

NO POSITION: